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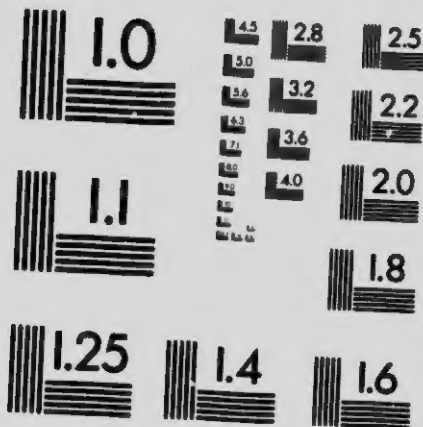


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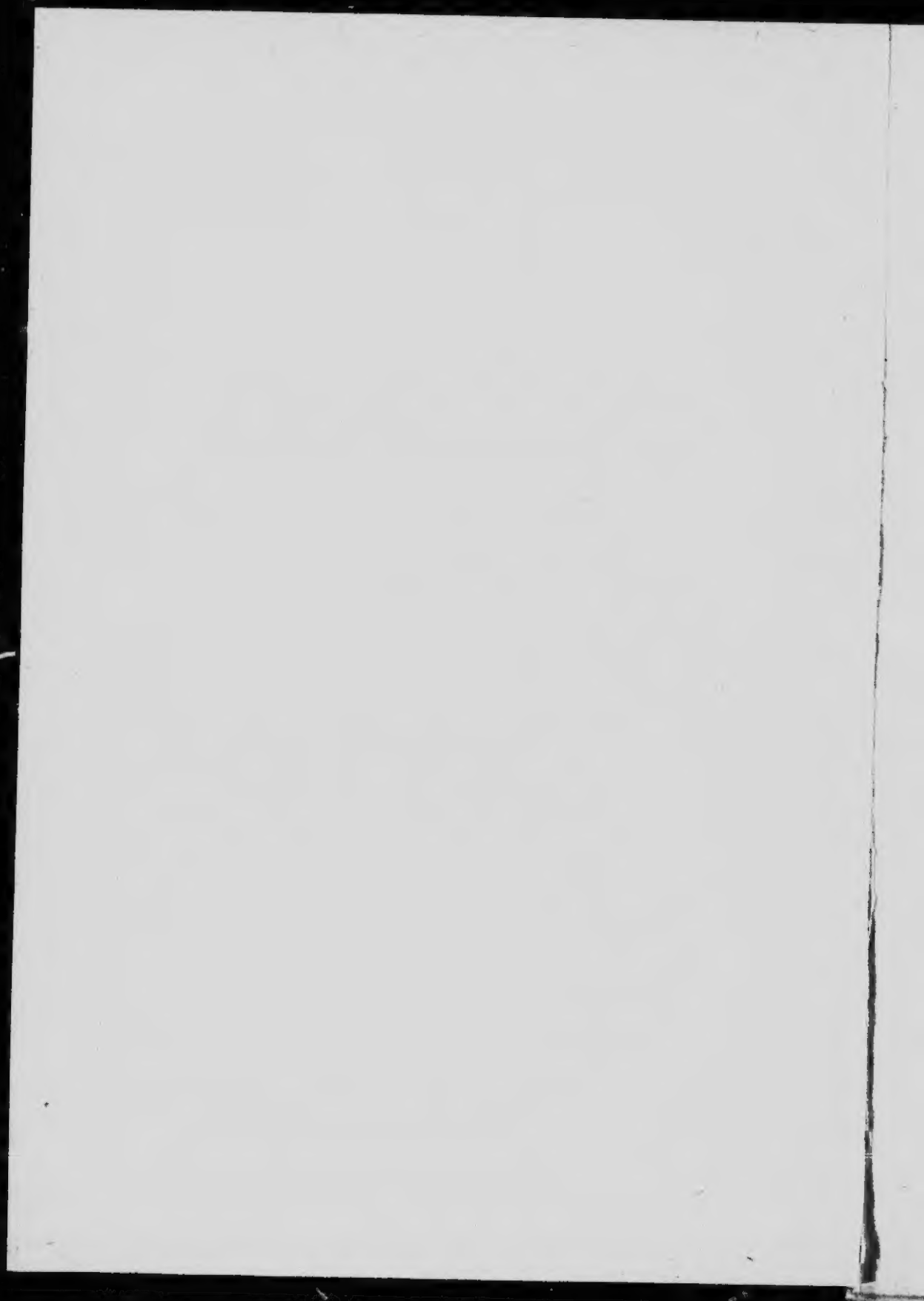
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Car. Keaton, Ernest

The Trust Company Idea



**The
Trust Company Idea
and its Development**

BY
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TORONTO
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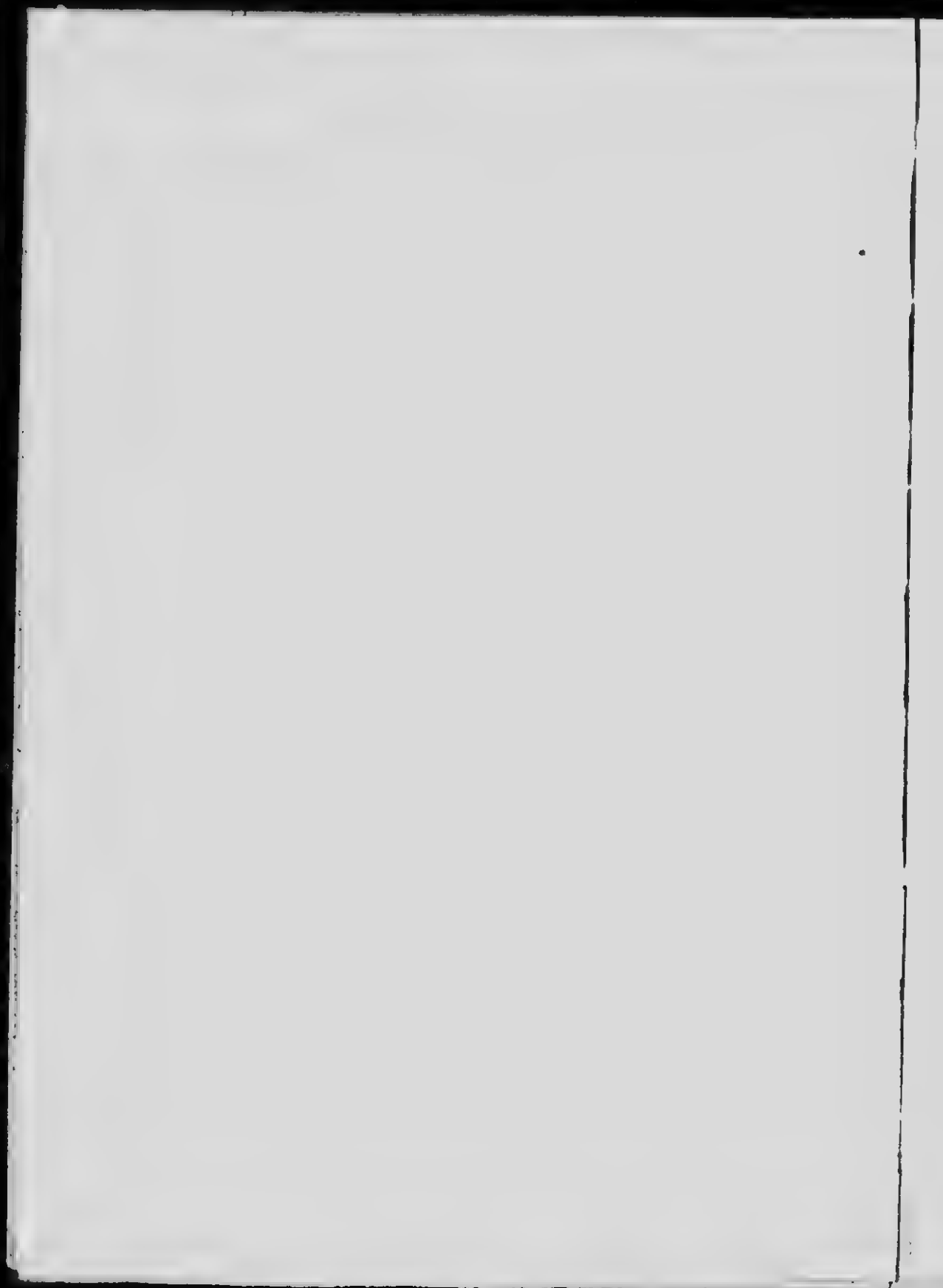
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The Trust Company Idea and its Development

The Trust Company Idea

It was formerly laid down that corporations could not be trustees. The reason assigned for this rule was that they could not be compelled to execute a trust, for Courts of Equity in decreeing the execution of a trust lay hold upon the conscience, and it is impossible that a body so artificially created could have a conscience. Again, it was said they could not be imprisoned if they refused to obey the rules of the court (1). But these technical rules have long ceased to operate, and to-day in more than one country the trust company is as firmly established as the bank.

It is interesting to note how starting from a common basis, the services of executor and trustee, distinct and totally different types of trust companies have been developed in the British Colonies and the United States reflecting on the one hand the conservative British character and on the other the versatile and organizing genius of the American people.

During the formative process of this new creation, with its wide elastic powers, it has been difficult to define the proper limits of the field which it ought to occupy and the safeguards that are necessary for the public. Consequently, generally speaking, legislation

(1) Perry on trusts, 5th Ed. 42.

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has been tentative and experimental. It was wisely said by a Greek philosopher, that in order to make wise and useful laws, it is necessary to look at the laws and systems of other countries (2). These short sketches may be some help to this end. Yet if other duties can be successfully undertaken in conjunction with the functions of executor and trustee, trust companies will not everywhere take precisely the same form, for it is natural to expect that in the future, as in the past, each country will develop its own type, having regard to its own needs, business methods and established institutions.

That there is a wide field of useful work for the corporate trustee has been proven by the independent testimony of several countries, and to the name "trust company" there is today attaching a well-earned significance and prestige. In this, at any rate there can be united action that the name may be protected from misuse by companies who do not carry on the business of executor and trustee.

(2) Aristotle Pol. II, 1.

THE AMERICAN TRUST COMPANY

The American Trust Company

It has been said that the trust company is essentially an American institution. It is true that extraordinary conditions and the remarkable growth of individual and corporate wealth in the United States during the last quarter of a century have produced there an evolution of the trust company idea which is peculiar to that country, and the development has no parallel in financial history.

The first companies to carry on the business of administrator and trustee in the United States were life insurance companies. An interesting account of the birth of the Trust Company idea in the United States is given in a book (1) published by the Pennsylvania Company for insurance of lives and granting annuities which was incorporated in 1812. About 1830 the great success of what in India were called Agency Houses attracted the attention of business men in the United States. These were concerns organized to transact business for trustees or individuals to receive money on deposit and to administer estates. On February 4, 1830, the directors of this Company appointed a committee to report on the advisability of entering on "the receipt of money from persons and in consideration thereof carrying out and executing such trusts as the persons giving the money should designate." But it was not until 1836 that a supplementary charter was ob-

(1) A sketch of the Pennsylvania Company for insurance of lives and granting annuities.

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tained granting authority to receive property, real and personal, in trust and to accept trusts of every description, while the Courts were permitted to appoint the company to the offices of trustee, assignee, guardian and committee of lunatics. In all fairness, however, this Company should divide the pioneer honours with the United States Trust Company of New York, which was incorporated in 1853, and was the first company organized in America to transact exclusively the business of a trust company. Its charter was the basis of all special charters afterwards granted in New York, as well as of the general law for the incorporation of trust companies, which was adopted in 1887.

There are only four trust companies now in existence which began business prior to 1836: The Farmers Fire Insurance and Loan Company of New York, incorporated in 1822; the New York Life and Trust Company; the Pennsylvania Company for insurance of lives and granting annuities; and the Girard Life Insurance Annuity and Trust Company of Philadelphia. Prior to the Civil War there were not more than half a dozen companies that actually undertook a trust business. Of the companies now in existence, forty-two began business between the years 1864 and 1875; ninety-nine between the years 1875 and 1885; five hundred and eighteen between 1885 and 1900, and nine hundred and twelve between 1900 and 1903. There are, therefore, today over fifteen hundred trust companies doing business in the United States (2). They have an aggregate capital of \$317,000,000, surplus and undivided profits of \$363,000,000, individual deposits

THE AMERICAN TRUST COMPANY

of \$2,122,000,000, and nearly \$3,000,000,000 of resources (3).

The American Trust Company of today combines every function of financial business, and has been called the department store of finance. In its later development it is primarily not a trust company, but a bank, with this distinction from the National and State banks, that it does not discount paper or issue bank notes. It also undertakes the following functions: Business as executor, administrator, assignee, trustee and agent for individuals, business as trustee, agent, transfer agent, registrar and liquidator for corporations, the reorganization and promotion of corporations, the underwriting of the stock of corporations, fidelity insurance, the insurance of land titles, and a safe deposit business (4). In the last few years there has been a tendency to the amalgamation of companies in large cities (5). It is only in the larger centres that the complete trust company is found; in the smaller towns companies with a small capital may be found devoting their attention to any of the above functions under the name of a trust company.

(2) Article by Clay Herrick, in February number, 1904, *Bankers' Magazine*, published in New York. This is one of a series of articles by the same author on the American Trust Company, which are a valuable contribution to the subject.

(3) Paper by Breckenridge Jones, Chairman, Trust Co. Section, American Bankers' Association, in March number *Trust Companies*, 1904.

(4) *Bankers' Magazine*, April, 1904.

(5) Notably in St. Louis and Greater New York.

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Originally the law makers of the different states appear to have intended that apart from insurance the primary business of a trust company should be the execution of trusts, and the other powers which were granted were only intended to be incidental and helpful to the successful carrying out of the duties of a trustee. The originators did not contemplate the addition of the duties of banking, safe deposit, fidelity and title insurance. But the companies disregarded the intention of the legislatures, and developed as they found most advantageous any of the powers with which they were invested, and gradually, starting from the receipt of deposits, they invaded the banking business. It is remarkable that in every state there has been a surrender to the demands of trust company promoters. In no state does there appear to have been any legislation rendering it possible to preserve the trust company on the original lines by limiting the number of companies to the demand for the services of a trustee. On the contrary, in nearly every state the general tendency of legislation has been to enlarge the scope of the trust company's functions (6).

There have been failures of companies doing business under the name of a trust company (7), but it is

(6) New York Statutes, 1900, 704, 30 Ap. provide that only corporations formed under the banking or insurance law may have the word trust as part of their name. A similar provision appears in Statutes of Indiana, 1899, 96, 24th February. The Statutes of New Jersey, 1895, 398, 4 June, prohibit trust companies from acting as fire insurance agents.

(7) Bradstreets' Journal, Feb. 6th, 1904, reports 41 failures of loan and trust companies in the eleven years from 1893 to 1903, inclusive. This, however, compares very favorably with the record of the National and State Banks at this period.

THE AMERICAN TRUST COMPANY

very difficult to ascertain what amount of trust funds, if any, has been lost by such failures. Officials of New York trust companies state that not a dollar of trust funds has ever been lost by the failure of a trust company in that city.

Trust companies did not invade the banking business without adverse criticism from the leading financial papers and the banking interests. The remarks of the New York superintendent of banking are typical of these views. In his report, dated 10th January, 1885, he said: "The number of trust companies has increased beyond the wants of the state, and a general law will be a benefit by helping to check their multiplication. Trust companies are needful, but only for certain well-defined purposes. They are misnamed, and in some cases misleading, when in the garb of a trust organization they exercise the powers of a bank." And again in his report, dated 23rd February, 1904, he says: "The right of trust companies to hold stocks in private corporations might wisely be defined, their right to engage in underwriting schemes unqualifiedly denied and the obligation imposed upon them to carry a legal reserve." The opposition of the Banking interests was natural but the complaint of invaded territory was no doubt exaggerated. The editor of the *Bankers' Magazine* dealing with this point says: (8) "During the period of the growth of trust companies there has been a corresponding increase in the number and financial strength of the banks. A fair view of the matter seems to lead to the conclusion that the trust companies have grown

(8) *Bankers' Magazine*, April, 1904.

THE AMERICAN TRUST COMPANY

in response to the opening of a new field for financial operations which the banks with their limited powers and traditions of business were not calculated to fill, and perhaps never would have filled. The growth of the trust companies is analogous to the growth of great private banking firms which has not excited the same opposition from the other banks. The trust companies, by cultivating and developing this new field have probably, if the facts were fairly marshalled, really added to the business of the banks rather than taken from it. The growth of trust companies has probably been chiefly due to the great increase in the wealth of the country, rendering the old methods for the conservation of estates by agents, lawyers, executors, administrators, etc., inadequate. This field was always a very large one and the trust companies are gradually filling and enlarging it as circumstances required."

The laws regulating the amount of capital required and the safeguards imposed vary in the different states. (9). The trust companies of the District of Columbia alone are under the direct supervision of the Federal Government. These companies are rated as among the strongest institutions in the South, and the laws regulating them are worthy of especial notice. They cannot be incorporated with less than \$1,000,000 capital. One-fourth of their capital must be deposited with the United States Treasury as a trust fund for the faithful discharge of their fiduciary obligations, and the books are subject to constant inspection.

(9) In Massachusetts and New York the directors of a trust company are required to take an oath of office.

THE CANADIAN TRUST COMPANY

The Canadian Trust Company

The history of trust companies in Canada was for some years practically the history of one company, the Toronto General Trusts Corporation, which was organized in 1882 under special charter granted by the Government of Ontario. From its incorporation it has enjoyed the confidence of the Government and courts of the Province; it invests the court funds of the Government in mortgages guaranteeing the principal and interest, and has full control and management of all lunatic estates in Ontario. The company has invested for the Court over \$6,000,000 and has assumed for the public and the Courts trust and estate business amounting to over \$40,000,000. In 1900 it absorbed the Trusts Corporation of Ontario. In 1901 an important branch was opened in the Province of Manitoba, when the company acquired the business and assets of the Winnipeg General Trusts Company, and in 1903 it absorbed the Ottawa Trusts and Deposit Company, and established an office in the capital city of the Dominion. The capital stock of the company stands at \$1,000,000, all paid up, with a reserve of \$300,000. From its inception the policy of the management has been dictated by a high sense of its paramount obligations as trustee. It has not used its wide powers except as incidental to the purpose for which it was created. It has not risked its character and capital by underwriting the stock of industrial enterprises; it has not received deposits.

THE CANADIAN TRUST COMPANY

There are today seventeen trust companies in Canada, counting the branches of the Toronto General Trusts and the Royal, the Eastern and the National Trust Companies all in as separate institutions. Of these, five are in Toronto, two in London, Ont., one in Ottawa, one in Vancouver, one in St. John, New Brunswick, two in Montreal, four in Winnipeg, and one in Halifax. Some of the existing companies are closely associated with a loan company, and trust and loan companies appear under the same headings in the Government reports and some of the City Directories.

It is not impossible that the American type of trust company may find a foot hold in Canada. The trust company charters that are granted by the Dominion and Provincial Governments contain very wide incidental powers. There is nothing to prevent a trust company holding one of these charters from making a living by one or more of its powers without doing a trust company business. If any new trust companies were organized to-day in Ontario they might be forced to earn a livelihood out of something else than the business of executor and trustee. Some of the existing companies have shown a tendency to depart from the more conservative line of policy. Public opinion is unformed, and no general principles appear to have been laid down to govern legislation in the various Provinces.

Canadian legislation affecting trust companies is generally in an incomplete and tentative condition. Charters are granted by the Dominion as well as the Provincial Governments, and there is no understanding

THE CANADIAN TRUST COMPANY

between the authorities as to the powers which shall be granted. But inasmuch as the control of the courts lies within the jurisdiction of the Provincial Governments, a company possessing a Dominion charter must obtain an order-in-council from the Province before it can act as trustee and administrator under the order of the court. Ontario and New Brunswick are the only Provinces which have passed a general law affecting trust companies; and in both cases this general law is incomplete. In Ontario, trust companies are governed by the Trust Company Act and the Loan Company Act, as well as the General Companies Act. The provisions sometimes conflict, and are liable to different interpretations.

The Ontario Trust Company Act (1) provides that the High Court may appoint a suitable person to investigate the affairs and management of a trust company, and the Lieutenant-Governor may appoint an inspector to examine the affairs of such company and report on the security afforded to those for whom its engagements are held; the New Brunswick statute (2) authorizes the appointment as trustee of a trust company which is approved by the Lieutenant-Governor. The company is subject to inspection at any time, and is required to deposit with the Receiver-General such sum of money or amount of securities as he may deem sufficient as security for the proper performance by such company of its trusts within the Province.

(1) Revised Stat. Ontario, 1897, Cap. 206.

(2) Stat. of New Brunswick, 1902, Cap. 106.

THE CANADIAN TRUST COMPANY

In both Provinces a trust company is prohibited from issuing debentures. Manitoba is the only Province which has in express terms (3) prohibited a trust company from receiving deposits, while the power is granted in the General Acts of Ontario and New Brunswick in respect to the sinking funds of municipalities and corporations.

The legislature of the Province of Ontario has the distinction of being the first in the world to provide against excessive competition; a very necessary precaution if it is desired to confine trust companies to the functions of executor and trustee. The Trust Company Act provides that the Lieutenant-Governor-in-Council may refer an application for incorporation to the High Court of Justice for the opinion of the Divisional Court as to the necessity for incorporation of the company having regard to the business to be done, and companies already incorporated and doing business, and whether public convenience and advantage would be promoted. The court shall receive affidavits filed by any parties interested and hear counsel, and if the opinion is unfavorable to the proposed company the application shall not be proceeded with. This provision, however, does not appear to apply to companies who have obtained a Dominion charter.

The peculiar provisions of the Provinces of British Columbia, Prince Edward Island and Quebec for the appointment of individual trustees deserve especial notice. In British Columbia the Lieutenant-Governor-in-Council may appoint one or more official administrators

(3) Revised stat. Manitoba, 1902, Cap. 170, Sec. 35.

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(4) in each County, whose duty it is to apply to the Court for an order to administer the personal estate of any person dying in his County intestate or without having appointed an executor. He is required to make monthly returns and to pay to the Provincial Treasurer any monies paid to him, as received, less his expenses, actually incurred in burying the deceased, and in collecting and preserving his estate; all of which must be vouched and allowed by the Provincial auditor.

On the death, resignation or removal of an official administrator, his successor by virtue of his appointment becomes administrator of any property remaining in his hands as administrator at the time of his death. Every person appointed official administrator is required to furnish security of not less than \$2,000 as the Lieutenant-Governor-in-Council may direct for the faithful performance of his duties and the security must be renewed every two years. The Court may also direct an official administrator to take possession, manage, mortgage, or sell the real estate of an intestate within the Province and to execute any necessary deeds or documents for this purpose (5). There are to-day eleven official administrators. There has been but one case of embezzlement, and this case was made good by the Government which is responsible for the proper conduct of these officials (6).

(4) Official Administrators' Act, B. C., Revised Statutes, 1897, Cap. 146.

(5) Interstate Estates Act, B. C., Revised Statutes, 1897, Cap. 106.

(6) Letter Deputy Minister of Finance of the Province of British Columbia.

THE CANADIAN TRUST COMPANY

In Quebec, too, we find the official individual trustee. This Province like the State of Louisiana and most European countries, is governed by laws founded upon the Roman civil code, under which the old rule still obtains that a corporation cannot be a trustee; consequently no corporation can be appointed executor or administrator by the courts of this Province. The old Roman office of curator still exists, and individuals are appointed trustees by the court under this title. The Province of Prince Edward Island in 1900 provided for the requirements of that Province by creating the office of the Registrar of the Court of Chancery, a corporation with perpetual succession. Trustees and administrators may transfer their trust to the Registrar, and the court is authorized to appoint the Registrar as trustee (7); but there is not much business done in his name. Where a trustee dies, property is frequently vested in him as an interim trustee; mortgages are sometimes taken in his name, but not to any great extent (8).

(7) Stat. Prince Edward Island, 1900, Cap. 2.

(8) Letter Clerk of the Crown, Charlottetown, P.E.I.

THE TRUST COMPANY IDEA IN ENGLAND

The Trust Company Idea in England

As an English institution the trust company idea has made little progress in Great Britain in comparison with the colonies and the United States, although safe deposit companies and companies doing fidelity insurance have existed for a number of years, and there have been many agency concerns which take up some of the other incidental duties of a trust company. One obstacle has been the absence of any provision for the remuneration of trustees. This has been removed by the Judicial Trustee Act of 1896, which provides that the High Court and certain other courts may upon application appoint a trustee who will act under the direction of the court, and also provides for the remuneration of such trustees. The opening for the corporate trustee was further advanced by the Bodies Corporate (Joint Tenancy) Act of 1899, which was specially designed to facilitate the holding of trust funds jointly by corporate bodies and individuals. This appears to be a popular method, as it enables the settlor or trustee to associate the company with any personal friends in whom he has confidence. The trust company need not interfere with the income; its services can be used only to render secure the corpus of the company, and the company does not interfere with the duties of the family solicitor, in whom the confidence of the settlor or testator is reposed. There are no special laws governing trust companies in England,

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but they are subject to the ordinary laws which govern private trustees.

There is no company in England which confines itself exclusively to the business of executor and trustee. In London we find the Trustee, Executors and Securities Company, which in the fiduciary business has not fulfilled the brilliant expectations of its promoters, and the Law Guarantee and Trust Society. The latter company, which has an active trust department, was established in 1888, and has a capital of £2,000,000, of which £200,000 is paid up, and a reserve of £180,000. Over three-quarters of the paid-up capital is invested in the names of the judges of the Supreme Court as trustees for the society. Many of its shareholders are connected with the legal profession and it has branches in Dublin, Edinburgh, Birmingham, Glasgow, Leeds, Liverpool, Manchester, and Newcastle-on-Tyne. This company also undertakes fidelity insurance and guarantees the payment of mortgages and debentures.

In Scotland many of the functions of a trust company are undertaken by the judicial factors, who, in their various classes, correspond very closely with the curators appointed under the old Roman Civil Code. The Court of Sessions has exercised the right of appointing judicial factors for centuries, but it was not until 1730 that the powers and duties of these officials came to be regulated by the Act of Sederunt, which governed all factors until the year 1889 except certain classes which came under the Pupils Protection Act of 1849. In 1889 the Judicial Factors (Scotland) Act was passed, which applied to all judicial factors, and brought

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their administration under the superintendence of the Accountant of the Court. As a matter of practice, judicial factors in Scotland are only appointed by the court, and are rarely, if ever, appointed by private parties. The office of the Judicial Trustee, appointed by the English Courts under the Judicial Trustees Act of 1896 and the Judicial Trustees Rules of 1897, is very similar to the judicial factor in Scotland. The appointment may be applied for by the trustee or any person interested in the trust. The judicial trustee is required to lodge with the court a complete statement of the trust property, and to correct it from time to time; to give security, unless otherwise ordered; to keep a separate trust account at a bank approved by the court; to lodge all documents of title with the bank subject to inspection by any person authorized by the court, and to make up annual accounts and deliver them to the court at fixed dates for audit. The Judicial Trustee Act like the similar provision in Scotland has not come into popular use and appointments are rarely applied for by private parties. The only trust company in Scotland is the Public Trustee, Limited, of Edinburgh.

Interest in the trust company idea has been chiefly aroused in the United Kingdom by the success of the American and colonial companies, some of whom have a London office; and the trust company idea is growing in popularity. In transactions with another country there is always a difficulty in knowing exactly whom to rely upon. The element of personal acquaintance is often impossible and with the growth of business the English public are learning that the established colonial trust company can be made very useful.

THE TRUST COMPANY IDEA IN ENGLAND

English companies and estates who have money to invest upon mortgage and municipal debentures are glad to make use of a responsible management and a reliable local advisory board. Capitalists who look for a larger profit than four or five per cent find the trust company the best medium to collect, sift and report upon specific investments in real estate, mines, or whatever else they may want. Better results can be obtained in this way than by relying upon the advice of an agent sent from home without knowledge of the country. In closing negotiations the trust company is a useful agent to hold deeds or money in escrow pending the fulfilment of a condition. Many people who have investments and interests in the colonies are learning to make use of the trust company as they do their family solicitor at home. It collects and remits rents, interest and dividends; it pays taxes and keeps insurance paid up; it will accept and act under power of attorney for the execution of deeds; it will take out letters of administration and probate and hold property in trust; it will advise as to the best course to pursue in the disposal and management of properties; and it is a convenient medium to represent English shareholders by proxy at the meetings of companies to protect their collective interests and urge any special line of policy. In many respects the trust company in the colonies may be used like the great agency firms, who have with profit to themselves done much useful work in India.

THE NEW ZEALAND PUBLIC TRUST OFFICE

The New Zealand Public Trust Office

In all of the Australian colonies, the Government has directly or indirectly the charge of trust funds. It was found that there was a temptation for the treasurer to use the money for Government purposes, which resulted in extravagance. It was consequently decided in New Zealand to place all trust funds in the hands of a separate official specially appointed for the purpose. (1) This led to the creation of the Public Trust Office, which was constituted by the Public Trust Office Act of New Zealand in 1872; (2) and was "designed to afford a convenient recourse where persons are in doubt as to the choice of a trustee and to relieve those who may be unwilling or unable to continue administration." The scope of the office was enlarged to include additional agency functions by the Public Trust Office Consolidation Act of 1894.

The Public Trust Office is a department of the Government service. The good faith of the administration is guaranteed by statute and the credit of the colony is pledged to maintain the integrity of the capital funds placed in the Trust Office where there is no direction for the investment of such funds, or where there is no direction for such investment other than

(1) Handbook of the Seven Australias.

(2) For full account of Public Trust Office see New Zealand Year Book, 1898, also paper by R. C. Nesbitt, read before the Law Society at Liverpool, Oct., 1903, published by Spottiswoode & Co., London.

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generally that the funds are to be inserted at the option of the Public Trustee in General Government Securities of New Zealand or in mortgages of real estate within the Colony. A common rate of interest is determined from time to time by order-in-council to be credited quarterly to the properties, free of all charges of the Public Trust Office. Before the Public Trustee can accept any appointment he must obtain the consent of an advisory Board styled the Public Trust Office Board, consisting of the Colonial Treasurer and two other members of the ministry, with four other officials of whom three form a quorum. The Public Trustee cannot accept an appointment conjointly with any other person.

The advantages of the office are thus set out in the New Zealand Year Book: "A person making a will or arranging a trust or purposing the appointment of an agent or attorney, must always be seriously concerned as to the security of the funds and the larger the amount of the funds the greater will be the concern for the security, and the less for the rate of interest. Private executors, trustees or agents or attorneys may be without the means of repairing the errors for which they are accountable or may in cases where their acts are justifiable make disastrous and ruinous investments. The draft of a will, deed of trust, settlement or power of attorney, will, when required, be examined in the Public Trust Office free of charge for the purpose of bringing to light any provisions which may be ambiguous. Wills of living persons may be deposited for safe keeping." Upon the death intestate of any person domiciled or having property in

PUBLIC TRUST OFFICE

New Zealand the Public Trustee is entitled to administration as of right; where an estate is under \$250 he can administer without even obtaining a grant and where a person dies intestate and an application is not made for a grant within three months he can apply for and obtain letters of administration unless the executive can satisfy the Court that the delay has been unavoidable or accidental. All capital monies are invested in a common fund. Contrary to the usual practice, the invested trust funds are not kept separate unless otherwise directed by the testator. Interest on the monies so invested is paid quarterly at a rate to be determined by the Governor-in-Council. Provision is made that if at any time the common fund is insufficient to meet the lawful claims thereon the Colonial Treasurer shall pay out of the Consolidated Fund sufficient to make up such deficiency.

By the Lunacy Act of 1882, the public trustee is authorized to undertake the administration of the estate of lunatics in every case where no committee may be appointed for the estate. Ninety per cent of the estates of the lunatics in the asylums are administered by the public trustee.

The total value of the estates in the hands of the public trustee, in 1903, was as follows: Wills and trusts, £1,279,743; intestate estates, £197,368; real estates £7,585; lunatic estates, £170,585; native reserves, £375,000; West Coast settlement reserves, £655,000; unclaimed lands, £21,504; making a total of £2,706,785. (3).

(3) New Zealand Year Book, 1903.

THE NEW ZEALAND PUBLIC TRUST OFFICE

New Zealanders apparently do not believe in giving a monopoly of the trust business to the Government. At any rate there are some people who prefer to employ a company rather than a Government official, for the Public Trustee has to compete with the private enterprise of two trust companies at Dunedin.

THE AUSTRALIAN TRUST COMPANY

The Australian Trust Company

Australians do not believe in the financial departmental store. No provision has been made in the Commonwealth, as in Ontario, to limit the number of trust company charters that are granted so that they shall not exceed the public demand, but they have done their best to frame their legislation so as to confine the trust company to its duties as trustee.

Incorporation is obtained under the General Companies' Act, but power to act as executor and administrator must be granted by special act of Parliament and the incidental powers that are given by the Legislature are limited to such as are strictly incidental to the functions of a trustee. The directors and the manager are liable in person for any breach of trust and malfeasance.

Some companies are permitted to guarantee the fidelity of an executor. All companies are responsible to the Supreme Court, and accounts are from time to time filed there, which accounts are open to inspection by the public. Every company is required to make a deposit in cash or securities with the treasurer of the state for the proper performance of its fiducial obligations (1).

The public trustee of New Zealand is not found in the other Australian colonies, but in South Australia, Queensland and Western Australia there is a

(1) A very complete account of Australian Trust Companies is given in the paper of R. C. Nesbitt before referred to.

THE AUSTRALIAN TRUST COMPANY

public official deputed to act as trustee in the case of unclaimed and intestate estates, whose duties in many respects are similar to the functions of the Judge of the Court of Probate in England under the Act of 1858. Evidently, the trust company idea is firmly established in Australia. There are fourteen trust companies in the Commonwealth, some of which have branch offices. Of these, five have their head office in Melbourne, one in Ballarat, one in Bendigo, two in Sydney, one in Adelaide, one in Hobart, one in Brisbane, one in Launceston, and one in Perth. They all pay a fair dividend to their shareholders. In 1903, the total net profits of the companies were £39,273, and the value of the estates in hand is estimated at between £21,000,000 and £22,000,000 (2).

The first trust company to be formed in Australia was the Trustees, Executors, and Agency Company of Melbourne, which was incorporated in 1879. This company, which to-day ranks first in the Commonwealth, has a London agency at 1 Delahay Street, Westminster. It has a subscribed capital, with double liability, of £150,000 of which £90,000 is paid up, and a reserve fund of £11,043. The amount at the credit of estates, trusts and clients, on the 30th June, 1903, was £7,467,202, and in the last sixteen years it has sold over £3,000,000 of real estate.

It is on record that the promoter of this company received his inspiration from the local demand for a perpetual executor, and the example of a successful

(2) The Australasian Insurance and Banking Record, December, 1903.

THE AUSTRALIAN TRUST COMPANY

trust company which had been established in South Africa. It may not be amiss to quote in full a portion of his testimony as taken before the Select Committee of the legislative assembly of Victoria on his application for a charter in 1879: "In consequence of the difficulty in getting executors and trustees to act, I thought I might do well by entering into the business of executor and trustee and to act for absentees. I found that the idea took very well and several persons appointed me their executor and trustee; but other persons raised the question as to what was to become of their estate in the event of my dying, or becoming incapable before I had administered the estate; and of course I could only reply that my executor, if I had one, must be my successor. But I did not find that very satisfactory to them. About this time I heard a company had been in existence at the Cape for a number of years which had carried on the business of executor, trustee and agent, and it seemed to me that that got over the difficulty to a great extent that had been raised by persons willing to employ me, but who were deterred by the fact that they did not know who would take my place. A company having perpetual succession, it appeared to me, would not be placed in the same position as an individual."

The Australian press generally speaks of the usefulness of the trust company in terms of high praise. Thus, "The Age," on 12th June, 1901, says: "Trustee companies are to most people preferable to private trustees, inasmuch as the best management of any estate can be insured, owing to specific knowledge being brought to bear on all points, as well as to the fact that companies

THE AUSTRALIAN TRUST COMPANY

cannot walk off with the ease of a private individual." "The Australasian Insurance and Banking Record," on 21st December, 1903, says: "The usefulness of trustee companies in Australia has long been demonstrated and the record of progress which we give is satisfactory." And "The Australasian," in its Jurist column, under date 15th August, 1903, says: "One is led to wonder at times, on the one hand, that any testator cares to trust the execution of his will to a friend, who may die just after his own decease, and leave the administration of the estate to strangers; and, on the other hand, that any private person is ready to take the risks of trusteeship. After the death of the trustee, the children of the testator may bring proceedings against the trustee's representatives for perfectly innocent breaches of trust, and also for breaches of trust by a co-trustee, which the deceased trustee never dreamt of, but which the court thinks he ought to have discovered. The assumption by individuals of trust obligations is an integral part of the system of English law, but in these states the formation of trustee companies with steffs whose duty it is to look after estates and see that the rights of beneficiaries are preserved, gets rid of the necessities of the situation, as experienced in England, and the marvel is that any person who is making a will should hesitate to appoint such a company to stand in his shoes when he is gone. In the uncertainties of death the certainty (morally speaking) of an efficient trustee is a rock to which the wise will cling. The fixed charges of the trustee companies are a kind of insurance premium against the ordinary risks of trusteeship."

THE AUSTRALIAN TRUST COMPANY

The business of trustee companies is steadily increasing in Australia, especially in Victoria, where there have been some glaring instances of fraud by private trustees and solicitors, who occupy the dual position of trustee and solicitor to the same estate.

THE TRUST COMPANY IDEA

The Trust Company Idea in Other Countries

The South Africans have copied the United States in building the trust company business upon the foundation of life insurance. In Johannesburg there are four trust companies, two of which also do life insurance. There are no other trust companies in the world, except in Mexico, which has been invaded by the American spirit. In the city of Mexico we find the Mexican Trust Company, a purely American foundation, and one or two other companies, which have lately been organized. (1).

In the older countries the ground is fairly well covered by other machinery. In India the agency firms attend to the management of estates and perform many of the functions of a trustee. Their wealth and prestige, combined with good management, commands public confidence. In Germany, Austria, and some other parts of the continent, mortgage banks exist in great numbers. These institutions, originally created to aid agriculture, undertake some classes of the work assumed by trust companies in the United States, such as the receipt, exchange, and distribution of securities in cases of organization, reorganization and consolidation.

In France, the Boards of Trade, Chambers of Commerce, and other quasi governmental bodies act

(1) Paper by Hon. Chas. Francis Philips, read before the meeting of American Bankers' Association, held at Milwaukee, 16th October, 1901.

I N O T H E R C O U N T R I E S

as trustees in matters of bankruptcy, receivership, and liquidation, and institutions, such as the Société Generale, the Crédit Lyonnais, and the Crédit Foncier, undertake on a huge scale, with remarkable success, what is perhaps the most prominent function of the American Trust Company, viz.: to gather together the long-time funds of the community, which are not wanted in daily commerce, and to lend them on the pledge of first-class securities.


It is interesting, incidentally, to note that in these countries, where people do not, as in America, move from place to place, credit is more highly valued by the borrower, and the banks are, therefore, able to lend vast sums of money in small amounts to poor men on personal security, where elsewhere they would be forced to pay exorbitant rates of interest.

THE FUNCTIONS OF A TRUST COMPANY

The Functions of a Trust Company

What are the functions of a trust company? A different answer will be given to this question in different countries. In the United States a trust company can undertake a banking business, the guaranteeing of land titles, the underwriting of stock, and practically everything and anything of an agency description that will pay. In Australia and in Canada trust companies, as we have seen, have been developed upon different lines; and the manager of a well-conducted company under this name would reply that there are some things which ought not to be done by a company to which the Government grants a charter for the purpose of attending to the interests of its wards, the orphan, the helpless and insane. It must not incur obligations to the public except in its capacity as trustee; and the invasion of the financial departmental store must be repelled, because the company which is confined to the functions of executor and trustee needs protection from the competition of the general agent.

The foundation of the trust company idea is the failure of the individual trustee. There are few people who cannot recall some instances where a widow, left sole executrix, has been badly advised, and lost all that she had; where the man whom everybody trusted, speculated with the moneys placed in his care, and was unable to make restitution, or where the fortunes of a family have been wrecked by the absconding of a trusted



THE FUNCTIONS OF A TRUST COMPANY

friend. (1). The trust company offers insurance against loss from these sources; and it is as necessary as insurance against fire. In the British Colonies it is argued that this insurance is rendered more effective if the trust business of the country is concentrated in a few companies and the whole time and thought of the officials is devoted to the work; and it is right that it should be so, because the business is limited and there are important interests at stake. The trust company is entrusted with the most sacred responsibilities. It is the guardian of family secrets; it has in its care the welfare and future of many families; it is the adviser of the helpless and unprotected and it is the trusted agent of the absentee. On the other hand in the United States it is claimed that, under wise management, the addition of a Savings Bank business and certain other functions is not only a convenience to the public, but it facilitates the trust business of a company and is necessary to give it added strength in the early stages of development and in the smaller towns where there is not a large volume of trustee business to be done, while advocates of the departmental store idea say that, with adequate capital to meet all requirements, it is as practical and as useful in finance as in commerce. Business of one department brings business to another; and it is a great convenience, which is particularly appreciated by women for whom a special department is organized by many Companies in the United States.

(1) Note, too, the lack of general popular support to the official individual trustee in Great Britain and elsewhere. Ante.

THE FUNCTIONS OF A TRUST COMPANY

The functions of the professional trustee company are manifold. It acts as executor or joint executor under a will, as administrator by direction of the next of kin, executors or a creditor entitled to administration who wish to renounce their responsibilities, as trustee of marriage and other settlements, as executor, administrator, or trustee in place of persons wishing to give up such positions, as committee of the estates of lunatics, and it undertakes the management of estates as agent or attorney under power for absentees or people who wish to be relieved from the worry and trouble of business. Acting in these capacities, it undertakes the fulfilment of all kinds of contracts, buys and sells real estate, collects rents, interest and dividends, attends to repairs and insurance, pays taxes, and buys and sells all kinds of investments. To maintain the equipment necessary to fulfil these duties better than an individual, and to make it pay, the trust company offers various services to the public. Thus every properly equipped trust company has a safe deposit branch. It will undertake to invest the funds of any person, and guarantee the prompt payment of interest. It can act as liquidator and assignee of insolvent estates. It acts for corporations in arranging amalgamations, as mortgagee for the securing of bonds, and as registrar and transfer agent. It is in a peculiarly advantageous position for undertaking a general real estate agency, and also to act as an appraiser of real estate.

And there is another legitimate and useful field of work for the colonial trust company. The problem of new countries has always been how to safely attract

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THE PUNCTIONS OF A TRUST COMPANY

the money that is stored in the old. How is the Old Country investor to collect specific investments for consideration? How is he to be protected from the unscrupulous promoter, from ignorance, incompetence and fraud, from the over-sanguine temperament of the trusted friend? To whom is he to entrust the care of his investments across the seas? In the established and well-managed trust company this medium can be found. It has all the necessary office machinery developed in every department; it has responsible agents and correspondents all over the country; it is in constant touch with the field of investment. It can offer to the investor the advice of an experienced manager and of a board of directors composed of men who know the country, and have been selected for their integrity, knowledge and business capacity, and it is a convenient medium to hold deeds and money in escrow pending the completion of an agreement.

THE ADVANTAGES OFFERED

The Advantages Offered by a Trust Company

The stock in trade of a trust company is special skill, constant vigilance, permanence, reliability, and, most important of all, good management. The advantages in selecting a well-managed trust company to act as executor and trustee are written in large letters in the literature of every company. The trust company does not die. This is a substantial advantage, because trusts frequently last for twenty-five or fifty years. The creator of a trust may select the original trustees with the greatest care, but it is impossible for him to control the selection of their successors. The trust company is always available; it is never ill, and never takes a vacation; its officers are experts in the management of estates; the execution of trusts is their primary concern and not subordinate to other interests, as is sometimes the case with individuals. These officers know how to meet each emergency as it arises, and how to make the best of estates committed to their charge. It is in constant touch through its manager and directors with the financial world, and is constantly on the watch in the interests of its clients to procure new investments and advise when a change of investment is desirable. A trust company cannot abscond. Its clients have the whole capital of the company as security for the faithful performance of its duties, and it keeps a separate ac-

BY A TRUST COMPANY

count of each trust, so that no trust funds can be imperiled in the possible event of disaster. It has proper vaults for the keeping of securities, and regular departments for every detail of the work to be done. Its advice is wholly disinterested, and as the custodian of family secrets it is as impersonal and secretive as the Egyptian sphinx. It costs no more to employ a trust company than an individual.

And there are other advantages in employing a trust company which have not been generally advertised. No man cares to be under an obligation to a friend or relative in his life; still less is he willing to place his family in this position after he is gone. Formerly no other course was open to the man who had property to leave behind him after death; but with the advent of the trust company the necessity for this has disappeared. The trust company is always available as an alternative; and the executor need nowadays feel no compunction in renouncing his position.

To quote from an Australian writer: "It is difficult, indeed, to see how any private individual would willingly accept the position of executor, unless it be the family solicitor, who makes his living out of such work. A man once an executor finds himself always a prisoner, because he is obliged to give much more time and attention to his trust work than to his own business, and the anxiety is unceasing. The danger of mistakes occurring owing to inexperience is considerable, the responsibilities are enormous, and the personal liability never ends. He may perform his duties conscientiously, but he will never be given any

ADVANTAGES OFFERED BY A TRUST COMPANY

thanks for his trouble. On the other hand, he may find himself at loggerheads with the members of his family, and perhaps be involved in law suits and other worries. There is no more fruitful source of discord between relations and friends than is brought about over the administration of wills and trusts."

APPENDIX

Australian Trust Companies

- Trustees, Executors and Agency Co., Melbourne.
- Union Trustee Co. of Australia, Melbourne.
- Equity, Trustees, Executors and Agency Co., Melbourne.
- National Trustees, Executors and Agency Co. of Australia, Melbourne.
- Perpetual Executors and Trustees Association of Australia, Melbourne.
- Ballarat Trustees, Executors and Agency Co., Ballarat.
- Sandhurst and Northern District Trustees, Executors and Agency Co., Bendigo.
- Permanent Trustee Co. of New South Wales, Sydney.
- Perpetual Trustee Co., Sydney.
- Executor Trustee and Agency Co. of South Australia, Adelaide.
- Queensland Trustees, Limited, Brisbane.
- Perpetual Trustees, Executors, and Agency Co. of Tasmania, Hobart.
- Tasmanian Permanent Executors and Trustees Association, Launceston.
- West Australian Trustee, Executor and Agency Co., Perth.

APPENDIX (*Continued*)

Canadian Trust Companies

- Imperial Trust Company of Canada, Toronto.
- National Trust Company, (Branches at Montreal and Winnipeg), Toronto.
- Toronto General Trusts Corporation, (Branches at Ottawa and Winnipeg), Toronto.
- Trusts and Guarantee Company, Toronto.
- Union Trust Company, Toronto.
- Canada Trust Company, London.
- London and Western Trusts Company, London.
- Royal Trust Company, (Branch at Winnipeg), Montreal.
- Eastern Trust Company, (Branch at St. John, N. B.), Halifax, N. S.
- Standard Trust Company, Winnipeg.
- British Columbia Trust Company, Vancouver.

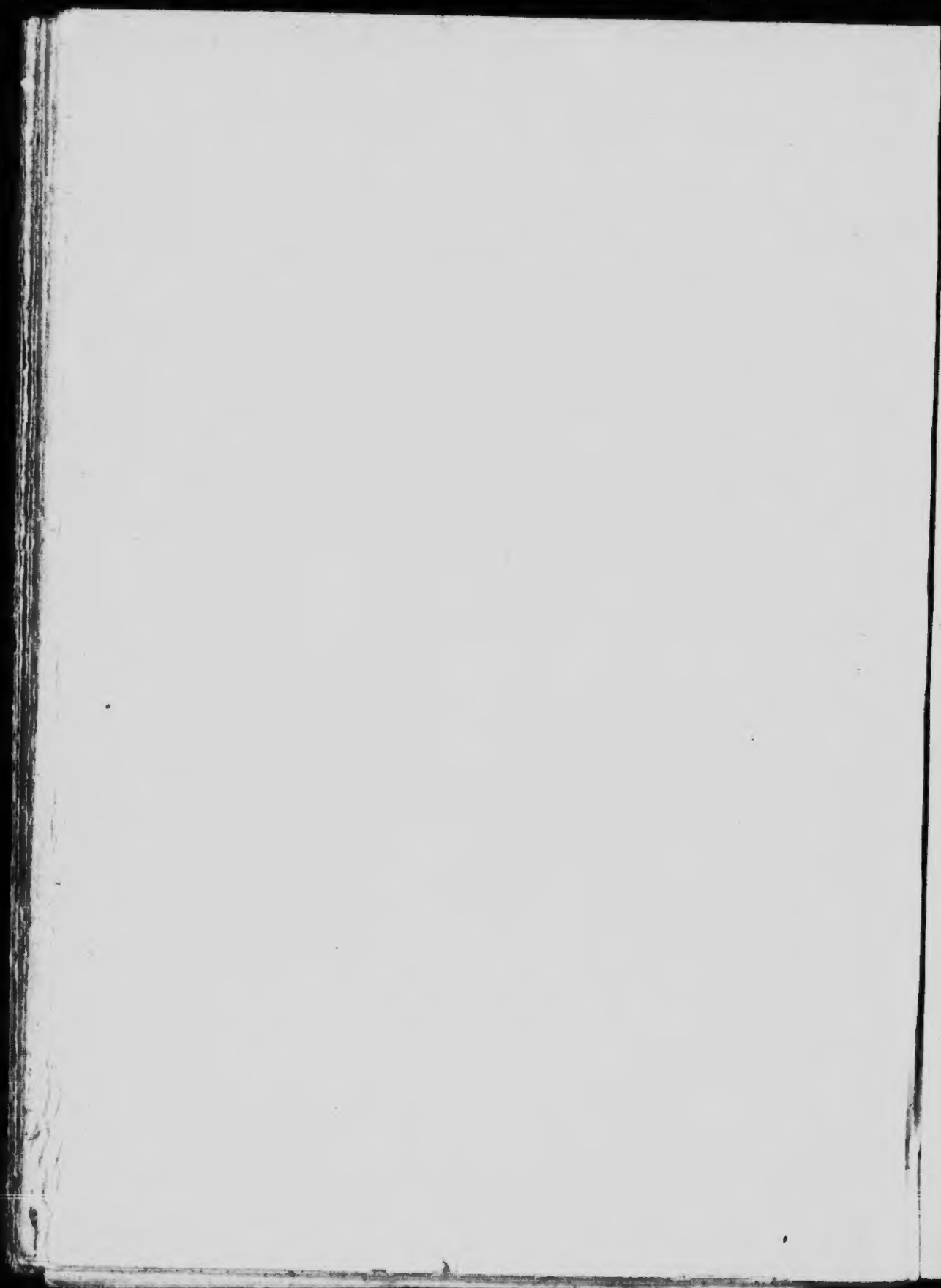
APPENDIX (*Continued*)

Trust Companies in Great Britain

Law Guarantee and Trust Society, 49 Chancery Lane, London.
Trustee, Executors and Securities Co., 1 Delahay Street,
Westminster, London.
Public Trustee, Limited, Edinburgh.

Trust Companies in the United States

A complete list can be obtained from The Editor, "Trust
Companies," 48 Cedar Street, New York, N. Y.



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